

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPHINE LELENIEWSKI,

Plaintiff-Appellant,

and

MEDICAL REHABILITATION PHYSICIANS,
d/b/a MICHIGAN SPINE & PAIN,

Intervening Plaintiff,

v

AMERISURE COMPANY,

Defendant-Appellee,

and

DONALD HAROLD ROSS,

Defendant.

UNPUBLISHED

April 10, 2012

No. 301084

Oakland Circuit Court

LC No. 2009-097090-NI

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Following a jury trial, plaintiff appeals by right the judgment of no cause of action entered in favor of defendant Amerisure Company (hereafter defendant). We affirm.

Plaintiff's claim arose from a January 2008 sideswipe collision between a car and an ambulance that was transporting plaintiff.¹ Both the car and the ambulance continued driving after the collision. Plaintiff subsequently sought and received treatment for neck and back pain, which alleged arose from injuries she sustained in the collision. Defendant initially paid benefits

¹ Defendant Ross was driving the car that collided with the ambulance. Ross is not a party to this appeal.

to plaintiff, but terminated those benefits in April 2008. Plaintiff sued defendant for additional benefits. At trial, the jury determined that plaintiff had not sustained bodily injury arising from the collision.

On appeal, plaintiff argues that a new trial is warranted on the ground the trial court improperly admitted irrelevant and unduly prejudicial evidence, including evidence of plaintiff's past drug usage and of her failure to file taxes, as well as photographs of the ambulance, and testimony from two defense witnesses. We review the trial court's evidentiary rulings for an abuse of discretion. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010).

In this case, the trial court did not abuse its discretion in the evidentiary rulings. All relevant evidence is admissible unless otherwise provided by constitution or court rule. MRE 402; *Morales v State Farm Mut Automobile Ins Co*, 279 Mich App 720, 729; 761 NW2d 454 (2008). "Relevant evidence" is evidence that "has any tendency to make the existence of a fact that is of consequence to the action more probable or less probable than it would be without the evidence." *Id.* at 729-730. At its discretion, the trial court may exclude relevant evidence if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence." *Id.* at 730; MRE 403. Unfair prejudice exists where there is danger that the jury will give the evidence undue or preemptive weight. *Taylor v Mobley*, 279 Mich App 309, 315; 760 NW2d 234 (2008).

Plaintiff first argues that the evidence of her prior drug use and of her failure to file income tax returns was unduly prejudicial. We disagree. Plaintiff's prior drug use was probative of her medical history and of the treating physicians' determinations of appropriate treatment for plaintiff's current complaints. Similarly, the income tax evidence was probative of plaintiff's credibility. "The credibility of a witness is an appropriate subject for the jury's consideration." *Powell v St John Hosp*, 241 Mich App 64, 72; 614 NW2d 666 (2000); see also MRE 608(b)(1). Moreover, even if the drug use and tax evidence was prejudicial, the references to those topics in the record were relatively brief. Consequently, the record contains no indication that the jury gave undue weight to the challenged evidence.

Plaintiff next argues that the "mend the hold" doctrine precluded the trial court from admitting into evidence the ambulance photographs and the testimony of defendant's medical experts. According to plaintiff, this doctrine requires that "when a loss under an insurance policy has occurred and payment refused for reasons stated, good faith requires that the company shall fully apprise the insured of all the defenses it intends to rely upon, and its failure to do so is, in legal effect, a waiver, and estops it from maintaining any defenses to an action on the policy other than those of which it has thus given notice." *Smith v Grange Mut Fire Ins Co of Mich*, 234 Mich 119, 122-123; 208 NW 145 (1926). Plaintiff maintains that the doctrine precludes introduction of evidence on any matters except those that defendant expressly relied upon in its original termination of benefits.

We need not determine whether plaintiff's recitation of the doctrine is correct, because we conclude that the evidence was admissible on the separate issue of defendant's ongoing investigation of plaintiff's claims. Likewise, the photographs of the damage to the ambulance were admissible to assist the jury in determining whether plaintiff's alleged injuries resulted

from the collision. Accordingly, the trial court was within its discretion in admitting the challenged testimony and the photographs at trial.

Plaintiff also argues that the trial court improperly denied her motion for a directed verdict regarding a Magnetic Resonance Imaging (MRI) bill. We disagree. A trial court's ruling on a motion for directed verdict is reviewed de novo. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). In reviewing such a decision, "this Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000).

Plaintiff contends that defendant is liable for the bill on the ground that she incurred the cost before defendant terminated her benefits. This contention ignores the central factual dispute in the lawsuit. The lawsuit turned upon whether plaintiff sustained a bodily injury arising from the collision. The record demonstrates that reasonable minds could have concluded (and the jury ultimately decided) that plaintiff's alleged injuries did not arise from the collision. Therefore, defendant cannot be held liable for outstanding costs associated with plaintiff's alleged injuries, including the MRI bill. The trial court properly denied plaintiff's motion for a directed verdict regarding the bill.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck